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PATENT TRADEMARK AND COPYRIGHT MATTERS

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MEMO ENDORSED

June 20, 2007



BY HAND

Honorable P. Kevin Castel  
United States District Judge  
United States Courthouse  
500 Pearl Street, Room 2260  
New York, NY 10007

Re: Alper v. RandomHouse and Dean Hamer  
07 Civ 2934 (PKC)

Dear Judge Castel:

This letter is sent on behalf of all parties in the above captioned matter pursuant to the conference before this Court on June 15, 2007. On June 4, 2007, defendants notified the Court in accordance with Your Honor's Individual Practices 2(A)(1) that they intended to file a motion to dismiss or in the alternative for summary judgment on the sole issue of whether there was substantial similarity of protected expression between plaintiff's book *The God Part of the Brain: A Scientific Interpretation of Human Spirituality and God* ("The God Part of the Brain") and *The God Gene: How Faith is Hardwired into our Genes* ("The God Gene") written by defendant Hamer and published by defendant Random House, Inc. (the "Motion"). For purposes of the Motion only, defendants would assume access to plaintiff's work. As stated in the joint letter to the Court dated June 7, 2007, if this Court were to deny the Motion, defendants anticipated filing further motions as appropriate following full discovery, including on the issue of access and independent creation.

At the June 15, 2007 conference, Your Honor noted that such an initial motion solely on the alleged lack of substantial similarity of protected expression could potentially speed resolution of the copyright case, but decided to give plaintiff limited discovery on the sole issue of substantial similarity before defendants could file the Motion. More specifically, the Court ordered defendants to file an Answer to the Amended Complaint no later than July 18, 2007, and to respond to the following "contention" interrogatory no later than July 25, 2007. The Court stayed all further discovery.

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Interrogatory No. 1

(a) Separately identify each of the allegations of copying that Defendants contend do not constitute copyright infringement because the material cited as having been copied is not protectible under the Copyright Act, and separately set forth the basis supporting each contention.

(b) Separately identify each of the allegations of copying that Defendants contend do not constitute copyright infringement because any material cited as having been copied is not substantially similar to Plaintiff's work, and separately set forth the basis supporting each contention.

Following receipt of defendants' response to this interrogatory, Your Honor has stated that he will meet with the parties to decide whether any further request from plaintiff for additional discovery on the issue of substantial similarity is merited before defendants file the Motion. As the Court informed the parties, the Court intends to set a date in early September for this conference, and has asked the parties to request a date and time.

Sincerely,

SCHWEITZER CORNMAN GROSS  
& BONDELL LLP

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*Conference  
to be held on  
September 5 at  
11:30 a.m.  
SO ORDERED  
USDS  
6-20-07*